

## **Rule 30. Appendix to the Briefs**

### **(a) Appellant's Responsibility.**

- (1) **Contents of the Appendix.** The appellant must prepare and file an appendix to the briefs containing:
  - (A) the relevant docket entries in the proceeding below;
  - (B) the relevant portions of the pleadings, charge, findings, or opinion;
  - (C) the judgment, order, or decision in question; and
  - (D) other parts of the record to which the parties wish to direct the court's attention.
- (2) **Excluded Material.** Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.
- (3) **Time to File; Number of Copies.** Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

### **(b) All Parties' Responsibilities.**

- (1) **Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.
- (2) **Costs of Appendix.** Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

**(c) Deferred Appendix.**

(1) **Deferral Until After Briefs Are Filed.** The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

**(2) References to the Record.**

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

**(d) Format of the Appendix.** The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

**(e) Reproduction of Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

**(f) Appeal on the Original Record Without an Appendix.** The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

***Local Rule 30(a). Attorney Sanctions for Unnecessary Appendix Designations.***

*The Court, on its own motion or on motion of any party, may impose sanctions against attorneys who unreasonably and vexatiously increase the costs of litigation through the inclusion of unnecessary*

material in the appendix. Attorneys shall receive reasonable notice and opportunity to respond before the imposition of any sanction. A party's motion for the imposition of sanctions will be entertained only if filed within 14 days after entry of judgment and only if counsel for the moving party previously objected to the designation of the allegedly unnecessary material in writing to opposing counsel within 14 days of the material's designation.

**Local Rule 30(b). Appendix Contents; Number of Copies.**

(1) **Required Contents:** In designating or agreeing upon the contents of the appendix, and in assembling the appendix, the parties should avoid unnecessary duplication of materials. The appellee's designation should only include those additional parts of the record to which it wishes to direct the Court's attention that have not already been designated by the appellant.

The use of a selectively abridged record allows the judges to refer easily to relevant parts of the record and saves the parties the considerable expense of reproducing the entire record. Although there is no limit on the length of the appendix except as provided in Local Rule 32(a), it is unnecessary to include everything in the appendix. The appendix should, however, contain the final order or order appealed from, the complaint or petition, as finally amended (civil appeals) or indictment (criminal appeals), as well as all other parts of the record which are vital to the understanding of the basic issues on appeal. Although the entire record is available to the Court should it believe that additional portions are important to a full understanding of the issues, citation to portions of the record not included in the appendix is not favored.

(2) **Table of Contents; Witness Names and Type of Examination:** The table of contents to the appendix should be sufficiently detailed to be helpful to the Court. Referring to the transcript of a trial under a single reference to "proceeding" or "trial transcript" is not sufficient. When the testimony of a witness is included in the appendix, the testimony should be clearly identified in the table of contents, beneath the proceeding in which it occurred. The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) should also be clearly indicated at the top of each page of the appendix where the witness's testimony appears. Exhibits should be listed in the table of contents by number or letter and by name or brief description.

(3) **Sentencing Guideline Appeals:** In all criminal appeals seeking review of the application of the sentencing guidelines, appellant shall include the sentencing hearing transcript and presentence report in the appendix. The presentence report must be included in a separate sealed volume, stamped "SEALED" on the volume itself and on the envelope containing it, and be accompanied by a certificate stating that the volume contains sealed material. In criminal cases in which presentence reports are being filed for multiple defendants, each presentence report must be placed in a separate, sealed volume that is served only on counsel for the United States and for the defendant who is the subject of the report.

**(4) Number of Copies:**

(A) **Filing:** Six paper copies of the appendix and any supplemental appendix must be filed. Appointed counsel may file five copies of an appendix or supplemental appendix, and any party proceeding in forma pauperis who is not represented by Court-appointed counsel may file four copies. In addition, the full appendix or an appendix excerpt must be filed electronically in accordance with Local Rule 25(a)(1)(D).

(B) **Service:** If the full appendix is filed electronically and served on counsel and on any party not represented by counsel, service of the paper appendix is not required. If an appendix excerpt instead of the full appendix is filed electronically, one paper copy of the appendix must be served on lead counsel for each party separately represented and on any party not represented by counsel.

(C) **Sealed Appendix Volumes:** For sealed volumes of the appendix, four paper copies must be

*filed and one paper copy must be served on lead counsel for each party separately represented who is authorized to have access to the sealed volume and on any party not represented by counsel who is authorized to have access to the sealed volume.*

**Local Rule 30(c). Responsibility of Parties.**

*Notwithstanding that FRAP 30 provides that the appellant shall prepare and file the appendix, the Court considers the coordination of preparing the appendix to be the responsibility of both sides. The failure of a side to designate does not absolve the other side from the responsibility.*

*Except under the most extraordinary circumstances, supplementary appendices will not be accepted. If the appellant omits from the appendix the portions designated by the appellee, the appellant will be required to file a corrected appendix incorporating such material, and to bear the cost regardless of the outcome of the appeal.*

*If a party files a motion for leave to file a supplemental appendix, the motion must specifically identify the contents of the supplemental appendix, state that the items are matters of record, and set forth good cause why the original appendix should not be returned for insertion of the additional materials.*

**Local Rule 30(d). Dispensing with Appendix.**

*Motions to proceed on the original record pursuant to FRAP 30(f) are carefully reviewed in the Fourth Circuit and are not usually granted unless the appellant is proceeding in forma pauperis, the record is short, or the appeal is expedited. Even if the motion is granted, counsel must include an abbreviated appendix consisting of:*

- i. pertinent district court docket entries,*
- ii. indictment or complaint,*
- iii. judgment or order being appealed,*
- iv. notice of appeal,*
- v. any crucial portions of the transcript of proceedings referred to in appellant's brief, and*
- vi. a copy of the order granting leave to proceed on the original record.*

*The requisite number of copies of the abbreviated appendix as set forth in Local Rule 30(b) must be filed with the brief.*

*Former Local Rule 30 redesignated Local Rule 30(a) December 1, 1995; amended December 1, 2009.*

*Former I.O.P.-30.1 amended and redesignated Local Rule 30(b) December 1, 1995; amended December 1, 1998, April 16, 2007, April 1, 2008, September 1, 2011, and July 2, 2012.*

*Former I.O.P.-30.2 redesignated Local Rule 30(c) December 1, 1995.*

*Former I.O.P.-30.3 redesignated Local Rule 30(d) December 1, 1995; amended April 1, 2008.*